

09/372,835

MEMORANDUM

DATE: September 14, 2004

TO: Craig Church
Technology Center Art Unit 2882

FROM: Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions
(703) 306-5589
After 9/27/04 (571) 272-3211

SUBJECT: Application Serial No. 09/372,835

This case was remanded to the Office of Petitions by the Board of Patent Appeals and Interferences for a determination of the filing date. After speaking to the attorney of record, petitioner requests that the application be accorded the filing date of August 12, 1999, as of the date the application papers were deposited in the US Patent Office without drawings. A question is raised under 35 USC 113, first sentence, as to whether or not a drawing is necessary for an understanding of the subject matter sought to be patented. A filing date may be accorded to this application if the subject matter of any claim in the application, as filed, does not require a drawing to be understood. This determination is different from the question of whether drawings would facilitate an understanding of the invention under 35 USC 113, second sentence, in which case, the filing date is not affected. See MPEP 601.01(f).

Accordingly, the above-identified application is referred to you for an opinion as to whether or not any claim in the application, as filed, can be understood without drawings. Once one claim has been determined to be understood without drawings, no further claims need be considered. Any claim for which a drawing is not deemed necessary for an understanding of the subject matter sought to be patented must be specifically identified by claim number. If it is determined that drawings are necessary to understand all of the claimed subject matter sought to be patented, the you should state the reasons for such determination, specifically identifying the subject matter recited in the claims for which a drawing is necessary for an understanding of the invention.

In formulating an opinion, you should ignore (1) any drawings presently of record which were filed subsequent to the original date of deposit of the application and (2) all references thereto (including reference numerals) in the specification.

Please return the application, along with the examiner's signed, dated and typed report, to the Office of Petitions by c.o.b

Friday, October 1, 2004.

NOTE: The following is an extract from MPEP 601.01(f):

APPLICATIONS FILED WITHOUT DRAWINGS

It has long been a practice to accept a process case (that is, a case having only process or method claims) which is filed without a drawing. The same practice has been followed in composition cases. Other situations where drawings are usually not considered essential for a filing date are:

I. **Coated articles or products.** Where the invention resides solely in coating or impregnating a conventional sheet, e.g., paper or cloth, or an article of known or conventional character with a particular composition, the application containing claims to the coated or impregnated sheet or article, unless significant details of structure or arrangement are involved in the article claims.

II. **Articles made from a particular material or composition.** Where the invention consists in making of a particular material or composition, unless significant details of structure or arrangement are involved in the article claims.

III. **Laminated Structures.** Where the claimed invention involves only laminations of sheets (and coatings) of specified material unless significant details of structure or arrangement (other than the mere order of the layers) are involved in the article claims.

IV. **Articles, apparatus or systems where sole distinguishing feature is presence of a particular material.** Where the invention resides solely in the use of a particular material in an otherwise old article, apparatus or system recited broadly in the claims; for example,

- a. Hydraulic system distinguished solely by the use therein of a particular hydraulic fluid;
- b. Packaged structures wherein the structure and arrangement of the package are conventional and the only distinguishing feature is the use of a particular fluid.

DRAWING REQUIREMENTS

The first sentence of 35 USC 113 requires a drawing to be submitted upon the filing where such drawing is necessary for the understanding of the invention. In this situation, the lack of a drawing renders the application incomplete and as such, the application cannot be given a filing date until the drawing is received. The second sentence of 35 USC 113 deals with the situation wherein a drawing is not necessary for the understanding of the invention but the case admits of illustration and no drawing was submitted on filing. The lack of the drawing in this situation does not render the application incomplete but rather is treated much in the same manner as an informality.

Date: October 8, 2004

To: Office of Petitions/
Board of Appeals & Interferences

Serial No: 09/372,835

Applicant: Russell et al

Responsive to your query of September 14, 2004, drawings are required pursuant to 37 CFR 1.83a but are not necessary for understanding or enablement of the invention. No claims require the benefit of drawings.

Any inquiry concerning this communication should be directed to Examiner Church at telephone number (571) 272-2488.



Craig E. Church
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Art Unit 2882